

REMARKS

Claims 1, 8, 26, and 27 have been amended. Claims 1-27 are pending in the present application. Reexamination and reconsideration of the application, as amended, are respectfully requested.

The examiner rejected claims 1-10, 13-25, 26, and 27 under 35 U.S.C. § 103(a) over U.S. Patent No. 5,636,641 to Fariabi in view of U.S. Patent No. 5,720,300 to Fagan. This rejection is respectfully traversed.

According to the examiner, Fariabi discloses a heat-treated elongate member/guide wire having an age hardened material and in part a superelastic material wherein the age hardened material and superelastic material extend from the proximal section to the distal section. At the bottom of page 7 of the pending Office action, the examiner argues that despite applicant's amendment to the claims with the word "substantially underneath the flexible body," the limitation could be interpreted to mean that when the elongate member is in a vertical position with the distal section facing up and the proximal section facing down, the two materials are "underneath the flexible body."

Applicant respectfully disagrees that the examiner's reading of the "underneath" limitation is consonant with the specification and drawings. However, applicant recognizes that the examiner is required to construe the claims as broadly as their terms reasonably allow. M.P.E.P. 2111.01. Therefore, applicant has amended claims 1, 8, and 27 to provide that the precipitation hardened material and superelastic material extend from the proximal section "to at least substantially, *in a radial direction*, underneath the flexible body." Claim 26 has been amended in a similar fashion. Support for this amendment is found in, for example, Fig. 1 and page 10, lines 10-12, of the pending application. Accordingly, the amended claims are distinguishable over the cited art individually or in combination.

The examiner rejected dependent claims 11 and 12 under 35 U.S.C. § 103(a) over Fariabi in view of Fagan and further in view of Reiss (WO98/22024). This rejection is respectfully traversed.

The examiner in the pending Office action did not respond to applicant's arguments. Nevertheless, since claim 11 and 12 depend on amended independent claim 8, applicant believes that these dependent claims are distinguishable over the cited art for the same reasons already given above with respect to all of the independent claims.

In view of the foregoing, applicant respectfully submits that all claims are now in condition for allowance. Reexamination and reconsideration of the application are respectfully submitted and allowance at an early date is solicited.

Respectfully submitted,

FULWIDER PATTON LEE & UTECHT, LLP

By:



Paul Y. Feng
Registration No. 35,510

PYF:gbr

Howard Hughes Center
6060 Center Drive, Tenth Floor
Los Angeles, CA 90045
Telephone: (310) 824-5555
Facsimile: (310) 824-9696
Customer No. 24201

62756.1